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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 674

ARMAND GREGOIRE, PETITIONER

v.

FRANCIS BIDDLE, TOM C. CLARK, EDWARD J. ENNIS, W. FRANK WATKINS AND THOMAS M. COOLEY, II

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court for the Southern District of New York (R. 11-14) is not reported. The opinion of the Court of Appeals for the Second Circuit (R. 20-25) is reported at 177 F. 2d 579.

JURISDICTION

The judgment of the Court of Appeals for the Second Circuit was entered on October 24, 1949 (R. 25). By order of Mr. Justice Jackson dated

December 28, 1949, the time for filing a
for a writ of certiorari was extended to M
1950 (R. 26). The petition was filed on M
1950. The jurisdiction of this Court is
under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Attorney General and o
ficers of the Department of Justice, irresp
motives, may be held personally liable
ages for the consequences of official acts pe
by them in administering the Alien Ene
of 1798.

2. Whether the complaint filed by pe
alleges a cause of action for violation of t
Rights Acts of the United States.

STATUTES, PROCLAMATION AND REGULATION INVO

1. The provisions of the Alien Enemy
1798 (R. S. 4067, 4069, 4070, as amended,
531, 50 U. S. C. 21, 23, 24) are set out in
pendix, *infra,* pp. 18-20.

2. Proclamation 2526 (6 Fed. Reg. 6323)
under that Act by President Roosevelt on
ber 8, 1941, and Proclamation 2655 (10 F
8947), issued under that Act by President
on July 14, 1945, are set forth in pertinent
the Appendix, *infra,* pp. 20-26.

3. The text of the Attorney General's Re
issued under Proclamation 2655 is set fortl
tinent part in the Appendix, *infra,* pp. 26

4. The pertinent provisions of the Civil Rights Acts, as they appear in R. S. 1979, 1980(3), 1981 (8 U. S. C. 43, 47(3) and 48) are set out in the Appendix, *infra,* pp. 28-30.

STATEMENT

Petitioner was born at Metz, in the province of Lorraine, on October 9, 1894, "at which time that territory was a part of Germany." *United States ex rel. Gregoire* v. *Watkins,* 69 F. Supp. 889 (S. D. N. Y.).[1] His allegiance as a German citizen continued until 1920, when the Treaty of Versailles enabled him, as well as other inhabitants of Alsace-Lorraine, to acquire French citizenship. *United States ex rel. Gregoire* v. *Watkins, supra,* at 893. On March 30, 1941, more than twenty years later, he arrived in the United States under the French immigration quota (R. 3). Shortly after Pearl Harbor, he was apprehended and interned as an alien enemy in accordance with the provisions of the Alien Enemy Act of 1798 (R. 5).

Petitioner thereafter applied, at four different times, for writs of habeas corpus on the theory that as a French citizen he was not subject to internment under the Alien Enemy Act of 1798. Each of his first three applications was dismissed, primarily on the ground that petitioner, having been

[1] This decision was handed down by District Judge Knox on petitioner's fourth application for a writ of habeas corpus (R. 12). Reference to the decision is made in the statement of facts set forth above inasmuch as the petitioner states that he is furnishing this Court with a record of the habeas corpus proceeding before Judge Knox (Pet. 3).

born in Alsace-Lorraine while it was under German sovereignty, was a "native" of Germany under the Alien Enemy Act of 1798, despite his French citizenship (R. 12; see *Ex parte Gregoire,* 61 F. Supp. 92 (N. D. Cal.)).[2]

His fourth application, filed after World War II hostilities had ceased and while he was detained at Ellis Island pending his deportation, was granted on September 18, 1946. Judge Knox construed the word "native" in the Alien Enemy Act to refer to the sovereignty of the place of birth not at the time of birth but at the time of internment or proposed deportation. Since the sovereignty of Alsace-Lorraine changed from German to French after World War I, the court ruled that petitioner was a "native" of a friendly, not hostile, nation, and therefore not an alien enemy under the Act. *United States ex rel. Gregoire* v. *Watkins,* 69 F. Supp. 889, 892. Petitioner was accordingly released from custody at Ellis Island on September 18, 1946

[2] In addition to affirming the Attorney General's determination that petitioner was a German native and therefore an alien enemy under the 1798 Act, District Judge St. Sure pointed out that according to information available to the Government, petitioner had fought in the German Army in World War I, had attended a meeting in Germany addressed by Hitler, had represented various German interests while practicing law in Paris during Germany's occupation of France in World War II, and had entertained high German officers in his law office in Paris during that period. *Ex parte Gregoire,* 61 F. Supp. 92, 93. Judge Knox also noted, while recognizing his lack of authority to pass on such matters, that petitioner had been suspected of subversive activities and that in "more than one instance, he was accused of being a French Fascist leader, and an anti-Semitic propagandist." *United States ex rel. Gregoire* v. *Watkins,* 69 F. Supp. 889, 891.

(R. 6). On appeal, the Court of Appeals for the Second Circuit affirmed the district court's interpretation of the meaning of the word "native." *United States* v. *Watkins,* 164 F. 2d 137.

On September 15, 1948, petitioner instituted the present proceeding in the Supreme Court of the State of New York, New York County, by serving a summons on respondent Ennis, who was a Director of the Alien Enemy Control Unit of the Justice Department during petitioner's internment (R. 1, 4). On October 20, 1948, Ennis filed a petition for the removal of the action to the United States District Court for the Southern District of New York, where respondents Clark (then Attorney General) and Watkins (then District Director of the Immigration Service of the Justice Department) appeared (R. 15). Respondents Biddle (a former Attorney General) and Cooley (a former Director of the Alien Enemy Control Unit) "were never served with papers nor did they appear in this action" (R. 2).

Respondents Ennis, Clark and Watkins were served with copies of the complaint (R. 15). It described petitioner's internment as an alien enemy and alleged that respondents had continued him in custody until his release on September 18, 1946 (R. 5-6). It also alleged that petitioner's imprisonment by respondents was illegal, that it caused him mental and physical pain, and that it injured his credit reputation (R. 6). Petitioner further asserted that respondents Biddle, Ennis and Cooley

conspired maliciously to deprive him of his liberty, and that respondents Clark and Watkins later joined this conspiracy (R. 6-7). As a second cause of action, the complaint stated that respondents' conduct deprived him of his rights and of the equal protection of the laws in violation of the Civil Rights Acts (R. 7-8).

Respondents Ennis, Clark and Watkins moved to dismiss on the ground that the complaint failed to state a claim against them on which relief could be granted (R. 9). The district court, holding (1) that the action for false imprisonment could not lie because respondents were immune from liability for even allegedly malicious acts performed by them within the scope of their official authority, and (2) that the facts pleaded were insufficient to allege a cause of action under the Civil Rights Acts, granted the motion and dismissed the complaint (R. 11-16). On appeal, the court below affirmed on both grounds (R. 20-25).

ARGUMENT

The gist of petitioner's complaint is that he was interned by respondents under the Alien Enemy Act of 1798, that the courts later ordered his release on the ground that he was not an alien enemy,[3] and that respondents are therefore personally liable to him in damages for false imprisonment. He

[3] Whether a person administratively restrained under the Alien Enemy Act is in fact an alien enemy is, of course, subject to judicial review. *Ludecke* v. *Watkins*, 335 U. S. 160, 171. See, fn. 5, *infra*, p. 12.

also contends that his complaint is sufficient to state a claim against respondents for damages under the Civil Rights Acts. Each of these contentions was urged upon, and rejected by, both courts below. The rulings below, we submit, are plainly correct, are supported by previous holdings of this Court, involve no conflict of decisions among the lower courts, and do not warrant further review by this Court.

1. It is settled that an executive official of the Government, regardless of his motives, is not personally liable for an act which is within the general scope of his official authority. *Spalding* v. *Vilas,* 161 U. S. 483, 498. This rule of complete immunity from individual damage suits for any action within the general scope of their authority has been applied to cabinet officers (*Spalding* v. *Vilas, supra; Standard Nut Margarine Co.* v. *Mellon,* 72 F. 2d 557 (C. A. D. C.), certiorari denied, 293 U. S. 605), the Comptroller of Currency, a United States Attorney and his Assistant (*Cooper* v. *O'Connor,* 99 F. 2d 135 (C. A. D. C.), certiorari denied, 305 U. S. 643), a member of the Securities and Exchange Commission (*Jones* v. *Kennedy,* 121 F. 2d 40 (C. A. D. C.), certiorari denied, 314 U. S. 665), members of the Parole Board, the warden of a Federal Penitentiary, and the Director of Federal Prisons (*Lang* v. *Wood,* 92 F. 2d 211 (C. A. D. C.), certiorari denied, 302 U. S. 686), officers of the Home Owners' Loan Corporation

(*Adams* v. *Home Owners' Loan Corp.*, 107 F. 2d 139 (C. A. 8)), Selective Service Board officials (*Gibson* v. *Reynolds*, 172 F. 2d 95 (C. A. 8), certiorari denied, 337 U. S. 925; *Dodenz* v. *Weygandt*, 173 F. 2d 965 (C. A. 5)), Army officers (*Burns* v. *Spiller*, 161 F. 2d 377 (C. A. D. C.), certiorari denied, 332 U. S. 792), subordinate bureau chiefs (*De Arnaud* v. *Ainsworth*, 24 App. D. C. 167), and various other officials (*Phelps* v. *Dawson*, 97 F. 2d 339 (C. A. 8); *White* v. *Brinkman*, 23 Cal. App. 2d 307).

Strong considerations of public policy justify this immunity rule. Apprehension that his official conduct may subject him to a civil action for damages impinges on the "perfect freedom which ought to exist in discharge of public duty * * * and often to the detriment of the public service." *De Arnaud* v. *Ainsworth*, 24 App. D. C. 167, 178; *Cooper* v. *O'Connor*, 99 F. 2d 135, 141-142. As Chief Judge Hand stated for the court below (R. 23-24):

> It does indeed go without saying that an official, who is in fact guilty of using his powers to vent his spleen upon others, or for any other personal motive not connected with the public good, should not escape liability for the injuries he may so cause; and, if it were possible in practice to confine such complaints to the guilty, it would be monstrous to deny recovery. The justification for doing so is that it is impossible to know whether the claim

is well founded until the case has been tried, and that to submit all officials, the innocent as well as the guilty, to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties. Again and again the public interest calls for action which may turn out to be founded on a mistake, in the face of which an official may later find himself hard put to it to satisfy a jury of his good faith. There must indeed be means of punishing public officers who have been truant to their duties; but that is quite another matter from exposing such as have been honestly mistaken to suit by anyone who has suffered from their errors. As is so often the case, the answer must be found in a balance between the evils inevitable in either alternative. In this instance it has been thought in the end better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation. Judged as *res nova*, we should not hesitate to follow the path laid down in the books.

The nature of the duties discharged by the five respondents—two successive Attorneys General of the United States, two successive Directors of the Alien Enemy Control Unit of the Justice Department, and a District Director of the Immigration Service of that Department—under the Alien Enemy Act emphasizes the full applicability of

these considerations to the instant case. It is, in fact, difficult to conceive of a group of officers whose independence of action and freedom from threats or compulsion of any kind is more essential than those who, in order to prevent subversive activities on the part of alien enemies during wartime, are charged with the responsibility of apprehending and restraining them. The nature of their duties also underscores the fact that each of these officials was exercising functions necessary to the proper administration of that Act when they performed the acts complained of here.

The Alien Enemy Act, effective during time of war,[4] declares that "all natives, citizens, denizens, or subjects" of hostile nations, who are within the United States, shall be liable to apprehension, restraint and removal as alien enemies. Section 21, *infra,* p. 18). To effectuate its obvious purpose of preventing such persons, presumed to have ties of allegiance with hostile nations, from taking overt action detrimental to the successful waging of war, the Act vests the President with summary power over alien enemies. (Section 21, *infra,* p. 18). President Roosevelt's Proclamation 2526, issued on December 8, 1941 (Appendix, *infra,* p. 20), redeclared the statutory liability of German alien enemies to restraint, expressly charged the

[4] The Act is still in effect as to World War II, which has not yet been terminated by treaty, legislation, or Presidential proclamation. *Ludecke* v. *Watkins,* 335 U. S. 160; *United States ex rel. Bejeuhr* v. *Shaughnessy, District Director,* 177 F. 2d 436 (C. A. 2), certiorari denied, 338 U. S. 948.

Attorney General "with the duty of executing all the regulations" relative to the internment and removal of German alien enemies, authorized him to require the assistance of any agent, officer or department of the United States, and specifically granted these agents and officers full authority for all acts done by them in the execution of the regulations under the Act. The chief source of assistance to the Attorney General in administering the Act was the Alien Enemy Control Unit within the Department of Justice (11 Fed. Reg. p. 177A-109, September 11, 1946), directed by respondents Ennis and Cooley (R. 4). To assist him in deporting alien enemies, in accordance with the Act and President Truman's Proclamation No. 2655 (Appendix, *infra,* p. 24), the Attorney General issued regulations requiring the Commissioner of the Immigration and Naturalization Service within the Justice Department, to "take the alien enemy into custody and * * * provide for his removal" from the country (28 C. F. R., 1949 ed., section 30.5, Appendix, *infra,* p. 28). These duties of the Commissioner were, like his other responsibilities calling for field action, discharged through his District Directors of the Immigration and Naturalization Service (11 Fed. Reg. p. 177A-111, September 11, 1946). Respondent Watkins, the District Director for New York, having supervision of persons detained at Ellis Island (R. 4), was therefore required to hold petitioner in custody prior to his proposed deportation.

This description of the distribution of functions under the Alien Enemy Act makes it plain that the actions of respondents Clark and Biddle in ordering petitioner's detention as an alien enemy,[5] the actions of Cooley and Ennis in recommending such detention, and the action of respondent Watkins in keeping petitioner in custody at Ellis Island, were entirely within the scope of their official authority under the Act. Under the principles established by the decisions cited above, they are therefore immune from personal liability for the consequences of those actions.

Petitioner, however, evidently relying on the allegations in his complaint to the effect that respondents "maliciously and wilfully" schemed to deprive him of his liberty (R. 6), argues that this rule of immunity does not protect officials where their official action is due to improper motives (Pet. 13, 19). It is well-settled, however, that general allegations of malice and bad faith add nothing to a complaint seeking damages for allegedly

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[5] The Attorney General's power to order confinement of alien enemies necessarily carries with it the power to determine, in the first instance, whether a particular individual is, or is not, an alien enemy—just as the immigration official, empowered to exclude or deport only aliens, has the power to determine whether a particular individual is an alien, rather than a citizen. *United States* v. *Watkins*, 165 F. 2d 1017 (C.A. 2). In both instances, while the determination is subject to judicial review, a reversal, despite petitioner's intimation to the contrary (Pet. 15, 32), does not necessarily mean that the official lacked jurisdiction to make that determination, or that his action was not taken honestly and in good faith. *Standard Nut Margarine Co.* v. *Mellon*, 72 F. 2d 557, 559 (C.A. D.C.), certiorari denied, 293 U.S. 605.

tortious conduct of public officials. (*Gibson* v. *Reynolds,* 172 F. 2d 95, 99-100 (C. A. 8), certiorari denied, 337 U. S. 925; *Lang* v. *Wood,* 92 F. 2d 211, 212 (C. A. D. C.), certiorari denied, 302 U. S. 686; *Standard Nut Margarine Co* v. *Mellon,* 72 F. 2d 557 (C. A. D. C.), certiorari denied, 293 U. S. 605.) Furthermore, as the court below emphasized in its summary of the applicable principles settled by the previous decisions (R. 21), respondents' motives for acting are immaterial so long as the acts complained of were within the general area of their official authority. *Yaselli* v. *Goff,*[6] 12 F. 2d 396 (C. A. 2), affirmed, 275 U. S. 503; *Spalding* v. *Vilas,* 161 U. S. 483; *Bradley* v. *Fisher,* 13 Wall. 335, 348; *Cooper* v. *O'Connor,* 99 F. 2d 135 (C. A. D. C.), certiorari denied, 305 U. S. 643; *Gibson*

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[6] Petitioner urges that the *Yaselli* case is distinguishable in that that case involved an action for malicious prosecution whereas he is basing his claim on an allegedly false imprisonment (Pet. 17). However, whether the suit is denominated one for malicious prosecution, false imprisonment or arrest, assault or battery, is obviously immaterial. The critical inquiry is whether petitioner's damages resulted from the performance by respondents of their official duties.

Equally untenable is petitioner's alternative contention (Pet. 30) that *Yaselli* was overruled by *Larson* v. *Domestic & Foreign Corp.,* 337 U.S. 682, and *Brady* v. *Roosevelt S.S. Co.,* 317 U.S. 575. At the most, those cases indicate that a government agent may, in certain circumstances, be personally liable for his torts—a proposition which we in no way deny. However, the *Larson* case itself recognizes that "there are, of course, limitations on the right to recover damages from public officers" and, in fact, cites with approval *Gibson* v. *Reynolds,* 172 F. 2d 95 (C.A. 8), certiorari denied, 337 U.S. 925, where the limitation on recovery was the same as that invoked by the court below in the instant case as well as in *Yaselli's* case (337 U.S. 682, 687, note 7).

v. *Reynolds,* 172 F. 2d 95 (C. A. 8), certiorari denied, 337 U. S. 925.

Finally, it must be said here, in view of the circumstance that the case comes here on the pleadings, that respondents, far from engaging in malicious or spiteful conduct, in fact acted with full justification in deciding, in the course of discharging their war-time duties under the Alien Enemy Act, that petitioner's French citizenship was in no way inconsistent with his being a "native" of Germany within the meaning of that Act and therefore subject to internment. In so interpreting the Act, respondents proceeded on the reasonable assumption that a person is a native of the place of his birth, and that Congress, in authorizing the control of aliens likely to favor the enemy in time of war, intended to authorize the control of persons who might be presumed to have ties to the enemy country because they were born within the sovereignty of that country. Certainly, the fact of birth within the sovereign power of a particular country is one which never changes and which reasonably may be considered as creating strong feelings of loyalty and emotional attachments on the part of the individual for the sovereign of the place of his birth. The law does not require the responsible officials to assume that a transfer of sovereignty over the place of birth, such as occurred when the Treaty of Versailles gave Lorraine to France, necessarily shifts the loyalties of

all persons who were born and grew up there. In view of these considerations, coupled with the fact that petitioner was born a German citizen in what was then German Territory and fought in the German Army during World War I, the justification for respondents' interpretation of the word "native," as it affected petitioner's status under the Alien Enemy Act, is apparent. Its reasonableness is still further demonstrated by the fact that on three different applications for a writ of habeas corpus, the district judges adopted the same interpretation.[7]

2. Petitioner's complaint also attempts to state a claim under the Civil Rights Statutes by combining R. S. 1979, 1980(3), and 1981, 8 U. S. C. 43, 47(3) and 48 (R. 7-8).

The terms of R. S. 1979 make plain its inapplicability here. Respondent's conduct in the instant case in no way involved action "under color of any statute, ordinance, regulation, custom, or usage, *of any State or Territory*" as contemplated by R. S. 1979, 8 U. S. C. 43 (Appendix, *infra*, p. 28) (italics supplied). While a federal official who deprives a person of his federal rights may be criminally

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[7] R. 12. It was on the fourth application for a writ that District Judge Knox on September 18, 1946, adopted a different view and ruled that the word "native" must be construed so as to ignore the true meaning of nativity, *i.e.*, the place of birth, and to look only to sovereignty status at the time of the proposed deportation or internment. This decision was affirmed by the Court of Appeals on November 6, 1947, 164 F. 2d 137.

liable under 18 U. S. C. 242 (formerly 18 U. S. C. 52, Section 20 of the Criminal Code), which is not limited to action under state laws or regulations, he may not, because of the presence of that limitation in R. S. 1979, be held civilly liable under R. S. 1979. See *Picking* v. *Pennsylvania R. Co.*, 151 F. 2d 240, 251, note 12 (C. A. 3). In this connection, it is important to note that the language in *Screws* v. *United States*, 325 U. S. 91, relied on by petitioner (Pet. 26-27), indicates at most only that federal officials may be liable under the criminal provisions of the Civil Rights Acts; it does not bear at all on the question of their civil liability.

Similarly, R. S. 1980(3), 8 U. S. C. 47(3) (Appendix, *infra*, p. 29) does not support petitioner. That statute authorizes civil actions for conspiracies to deprive persons of rights secured to them by the Constitution. However, it does not afford redress for such wrongs as "assault and battery [or] false imprisonment," which involve the individual invasion of private rights. *Love* v. *Chandler*, 124 F. 2d 785, 787 (C. A. 8); see *Hodges* v. *United States*, 203 U. S. 1; *Civil Rights Cases*, 109 U. S. 3. Since the instant action is grounded on an allegedly false imprisonment, arising out of an administrative detention based, as we have shown above, on respondent's reasonable interpretation of the Alien Enemy Act, it cannot be made actionable under R. S. 1980(3) merely because that interpretation was later held erroneous.

Nor can petitioner's complaint be based on R. S. 1981, 8 U. S. C. 48 (Appendix, *infra*, p. 30). As observed by the court below, this section "does not go beyond what is forbidden" by R. S. 1980, 8 U. S. C. 48 (R. 25). In any event, it is plain that petitioner's alleged claim is barred by the one-year statute of limitations imposed by R. S. 1981 (Appendix, *infra*, p. 30). His cause of action accrued no later than September 18, 1946, the date of his release from custody (R. 5-6). The instant action was not instituted against respondent Ennis until September 15, 1948 (R. 1),[8] almost two years after the cause of action accrued.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted

PHILIP B. PERLMAN,
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Attorneys.

APRIL 1950.

[8] As against respondents Clark and Watkins, the action was instituted even later, and would be barred, as well, by the two-year statute of limitations on false imprisonment suits in New York. Section 50, New York Civil Practice Act; see *Dusenbury* v. *Keiley*, 85 N.Y. 383; *Salerno* v. *Lansing*, 269 App. Div. 810. Respondents Cooley and Biddle were "never served with papers nor did they appear in this action" (R. 2). Both the one and two-year limitation periods would therefore also bar any suit which might be instituted against them.

APPENDIX

1. The pertinent provisions of the Alien Enemy Act of 1798 (R. S. 4067, 4069, 4070, as amended, 50 U. S. C. 21, 23, 24) provide:[9]

§ 21. Restraint, regulation, and removal.

Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies. The President is authorized in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the prem-

[9] The section numbers used are those which appear in Title 50 of the United States Code.

ises and for the public safety. (R. S. § 4067; Apr. 16, 1918, ch. 55, 40 Stat. 531.)

* * * * * * *

§ 23. Jurisdiction of United States courts and judges.

After any such proclamation has been made, the several courts of the United States, having criminal jurisdiction, and the several justices and judges of the courts of the United States, are authorized and it shall be their duty, upon complaint against any alien enemy resident and at large within such jurisdiction or district, to the danger of the public peace or safety, and contrary to the tenor or intent of such proclamation, or other regulations which the President may have established, to cause such alien to be duly apprehended and conveyed before such court, judge, or justice; and after a full examination and hearing on such complaint, and sufficient cause appearing, to order such alien to be removed out of the territory of the United States, or to give sureties for his good behavior, or to be otherwise restrained, conformably to the proclamation or regulations established as aforesaid, and to imprison, or otherwise secure such alien, until the order which may be so made shall be performed (R. S. § 4069).

§ 24. Duties of marshals.

When an alien enemy is required by the President, or by order of any court, judge, or justice, to depart and to be removed, it shall

be the duty of the marshal of the district in which he shall be apprehended to provide therefor and to execute such order in person, or by his deputy or other discreet person to be employed by him, by causing a removal of such alien out of the territory of the United States; and for such removal the marshal shall have the warrant of the President, or of the court, judge, or justice ordering the same, as the case may be (R. S. § 4070).

2. Proclamation 2526 issued by President Roosevelt on December 8, 1941, provides (6 Fed. Reg. 6323):

A PROCLAMATION

Whereas it is provided by section 21 of title 50 of the United States Code as follows:

* * * [*supra*, pp. 18-19] * * *

And whereas by sections 22, 23 and 24 of title 50 of the United States Code further provision is made relative to alien enemies:

Now, therefore, I, Franklin D. Roosevelt, as President of the United States and as Commander in Chief of the Army and Navy of the United States, do hereby make public proclamation to all whom it may concern that an invasion or predatory incursion is threatened upon the territory of the United States by Germany.

And, acting under and by virtue of the authority vested in me by the Constitution of the United States and the said sections of the United States Code, I do hereby further pro-

claim and direct that the conduct to be observed on the part of the United States toward all natives, citizens, denizens or subjects of Germany being of the age of fourteen years and upwards who shall be within the United States or within any territories in any way subject to the jurisdiction of the United States and not actually naturalized, who for the purpose of this Proclamation and under such sections of the United States Code are termed alien enemies, shall be as follows:

All alien enemies are enjoined to preserve the peace towards the United States and to refrain from crime against the public safety, and from violating the laws of the United States and of the States and Territories thereof; and to refrain from actual hostility or giving information, aid or comfort to the enemies of the United States or interfering by word or deed with the defense of the United States or the political processes and public opinions thereof; and to comply strictly with the regulations which are hereby or which may be from time to time promulgated by the President.

All alien enemies shall be liable to restraint, or to give security, or to remove and depart from the United States in the manner prescribed by sections 23 and 24 of title 50 of the United States Code, and as prescribed in the regulations duly promulgated by the President.

And, pursuant to the authority vested in me, I hereby charge the Attorney General with the duty of executing all the regulations here-

inafter prescribed regarding the conduct of alien enemies within continental United States, Puerto Rico, the Virgin Islands and Alaska, and the Secretary of War with the duty of executing the regulations which are hereinafter prescribed and which may be hereafter adopted regarding the conduct of alien enemies in the Canal Zone, the Hawaiian Islands and the Philippine Islands. Each of them is specifically directed to cause the apprehension of such alien enemies as in the judgment of each are subject to apprehension or deportation under such regulations. In carrying out such regulations within the continental United States, Puerto Rico, the Virgin Islands and Alaska, the Attorney General is authorized to utilize such agents, agencies, officers and departments of the United States and of the several states, territories, dependencies and municipalities thereof and of the District of Columbia as he may select for the purpose. Similarly the Secretary of War in carrying out such regulations in the Canal Zone, the Hawaiian Islands and the Philippine Islands is authorized to use such agents, agencies, officers and departments of the United States and of the territories, dependencies and municipalities thereof as he may select for the purpose. All such agents, agencies, officers and departments are hereby granted full authority for all acts done by them in the execution of such regulations when acting by direction of the Attorney General or the Secretary of War, as the case may be.

The regulations contained in Proclamation No. 2525 of December 7, 1941, relative to natives, citizens, denizens or subjects of Japan are hereby incorporated in and made a part of this proclamation, and shall be applicable to alien enemies defined in this proclamation.[10]

This proclamation and the regulations herein prescribed shall extend and apply to all land and water, continental or insular, in any way within the jurisdiction of the United States.

In witness whereof, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

Done at the City of Washington this 8th day of December, in the year of our Lord nineteen hundred and forty-one, and of the Independ-

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[10] Proclamation No. 2525 includes the following regulation (6 Fed. Reg. 6321, 6323):

(7) Alien enemies deemed dangerous to the public peace or safety of the United States by the Attorney General or the Secretary of War, as the case may be, are subject to summary apprehension. Such apprehension shall be made in the continental United States, Alaska, Puerto Rico and the Virgin Islands by such duly authorized officer of the Department of Justice as the Attorney General may determine. * * * Alien enemies arrested shall be subject to confinement in such place of detention as may be directed by the officers responsible for the execution of these regulations and for the arrest, detention and internment of alien enemies in each case, or in such other places of detention as may be directed from time to time by the Attorney General, with respect to continental United States, Alaska, Puerto Rico and the Virgin Islands, and by the Secretary of War with respect to the Canal Zone, the Hawaiian Islands and the Philippine Islands, and there confined until he shall have received such permit as the Attorney General or the Secretary of War with respect to the Canal Zone, the Hawaiian Islands and the Philippine Islands shall prescribe.

ence of the United States of America the one hundred and sixty-sixth.

[SEAL.] FRANKLIN D. ROOSEVELT.

By the President:

CORDELL HULL,
Secretary of State.

Proclamation 2655, issued by President Truman on July 14, 1945, provides (10 Fed. Reg. 8947):

A PROCLAMATION

Whereas section 4067 of the Revised Statutes of the United States (50 U. S. C. 21) provides:

* * * [*supra,* pp. 18-19] * * *

Whereas sections 4068, 4069, and 4070 of the Revised Statutes of the United States (50 U. S. C. 22, 23, 24) make further provision relative to alien enemies;

Whereas the Congress by joint resolutions approved by the President on December 8 and 11, 1941, and June 5, 1942, declared the existence of a state of war between the United States and the Governments of Japan, Germany, Italy, Bulgaria, Hungary, and Rumania;

Whereas by Proclamation No. 2525 of December 7, 1941, Proclamations Nos. 2526 and 2527 of December 8, 1941, Proclamation No. 2533 of December 29, 1941, Proclamation No. 2537 of January 14, 1942, and Proclamation No. 2563 of July 17, 1942, the President pre-

scribed and proclaimed certain regulations governing the conduct of alien enemies; and

Whereas I find it necessary in the interest of national defense and public safety to prescribe regulations additional and supplemental to such regulations:

Now, therefore, I, Harry S. Truman, President of the United States of America, acting under and by virtue of the authority vested in me by the Constitution of the United States and the aforesaid sections of the Revised Statutes of the United States, do hereby prescribe and proclaim the following regulations, additional and supplemental to those prescribed by the aforesaid proclamations:

All alien enemies now or hereafter interned within the continental limits of the United States pursuant to the aforesaid proclamations of the President of the United States who shall be deemed by the Attorney General to be dangerous to the public peace and safety of the United States because they have adhered to the aforesaid enemy governments or to the principles of government thereof shall be subject upon the order of the Attorney General to removal from the United States and may be required to depart therefrom in accordance with such regulations as he may prescribe.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 14th day of July in the year of our Lord nineteen hundred and forty-five and of the Independ-

ence of the United States of America the one hundred and seventieth.

By the President:

[SEAL.] HARRY S. TRUMAN.

JAMES F. BYRNES,
Secretary of State.

3. The pertinent regulations of the Attorney General (10 Fed. Reg. 12189, as amended, 13 F. R. 8291) pursuant to Presidential Proclamation 2655 (28 CFR, 1949 ed.) provide:

TITLE 28—JUDICIAL ADMINISTRATION

CHAPTER I—DEPARTMENT OF JUSTICE

Part 30—Travel and Other Conduct of Aliens of Enemy Nationalities

REMOVAL OF ALIEN ENEMIES FROM THE U. S.

Sec.

30.1 Removal from the United States of alien enemies.
30.2 Order of the Attorney General.
30.3 Service of removal order on alien enemy.
30.4 Thirty-day period for voluntary departure.
30.5 Involuntary removal from the United States.

AUTHORITY: §§ 30.1 to 30.5 issued under R.S. 4067, as amended; 50 U. S. C. 21.

§ 30.1 *Removal from the United States of alien enemies.* The Proclamation of the President of the United States, No. 2655, 3 CFR,

1945 Supp., dated July 14, 1945, provides in part:

"All alien enemies * * * interned within * * * the United States * * * who shall be deemed by the Attorney General to be dangerous to the public peace and safety of the United States because they have adhered to the aforesaid enemy governments or to the principles of government thereof shall be subject upon the order of the Attorney General to removal from the United States and may be required to depart therefrom in accordance with such regulations as the Attorney General may prescribe."

§ 30.2 *Order of the Attorney General.* When a determination has been made by the Attorney General that an interned alien enemy is deemed to be dangerous to the public peace and safety of the United States because he has adhered to an enemy government or to the principles of government thereof, an order will be signed by the Attorney General directing that the said alien enemy depart from the United States within thirty (30) days after notification of the order and that, if he fails or neglects so to depart, the Commissioner of Immigration and Naturalization is to provide for the alien enemy's removal to the territory of the country of which he is a native, citizen, denizen or subject.

* * * * *

§ 30.5 *Involuntary removal from the United States.* In the event that an alien enemy, who

is the subject of a removal order, fails or neglects to depart from the United States within the above-mentioned thirty-day period, the Commissioner of Immigration and Naturalization will take the alien enemy into custody and will provide for his removal to the territory of the country of which he is a native, citizen, denizen or subject, as soon as transportation is available.

Approved: September 26, 1945.

TOM C. CLARK,
Attorney General.

4. The pertinent provisions of R.S. 1979, 1980(3), 1981 (8 U. S. C. 43, 47(3), and 48), read as follows:[11]

§ 43. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. (R.S. § 1979.)

§ 47. Conspiracy to interfere with civil rights—

* * * * *

[11] The section numbers used are those which appear in Title 8 of the United States Code.

(3) Depriving persons of rights or privileges.

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. (R. S. § 1980.)

§ 48. Same; action for neglect to prevent.

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 47 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued. (R.S. § 1981.)

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